

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 124 of 1999

and

SPECIAL CIVIL APPLICATION NO. 125 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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NIRUPAMABEN JANI

Versus

MK ACHARYA OR HIS SUCCESSOR IN OFFICE

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Appearance:

MR JAYANT PATEL for Petitioners in both the matters  
MR BY MANKAD, Asst.Govt.Pleader for Respondent Nos.1  
& 2 in both the matters.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/06/1999

COMMON ORAL JUDGEMENT

In both these cases, the notices were issued by  
the Court on 11th January 1999. During the course of  
hearing today, it is found that the controversy is  
limited only with regard to supply of certain documents  
and for the purpose of this limited controversy as to

whether the petitioners are entitled to the documents or not, the respondents nos.3 and 4 do not appear to be necessary parties as the question for giving the documents is concerned with the respondents nos.1 and 2 only.

2. Rule. Mr.B.Y.Mankad, learned Asstt. Govt. Pleader waives the service of Rule on behalf of the respondents nos.1 and 2. Respondents no.3 and 4 are dropped out from the array of respondents.

3. It is the case of the petitioners that petitioner no.1 in Special Civil Application No. 124 of 1999 and the only petitioner in Special Civil Application No.125 of 1999 is the elected President of Manavdar Municipal Borough. It also appears that there are two groups in this Borough; one group of the Councillors is on the side of the President and the other group is against it which has been described by the petitioner as the minority group. A meeting of the General Body of the Municipal Borough was scheduled to be held at 5.00 p.m. on 31st March 1998, but it could not be held at 5.00 p.m. on that day because the proceedings of auction for Octroi contract did not complete by 5.00 p.m. and therefore, the President of the Municipal Borough decided to hold the meeting at 9.00 p.m. and according to the petitioners, all concerned had been duly informed of this meeting to be held at 9.00 p.m. instead of 5.00 p.m. However, the fact is that at 9.00 p.m. when the meeting was held, those who were on the side of the President of the Municipal Borough, i.e. Smt. Nirupamaben Jani, attended the meeting and passed the budget, but the other group which has been described by the petitioners as the minority group did not attend this meeting. The Collector, thereupon passed an order staying the proceedings and the budget which had been passed in the meeting held at 9.00 p.m. on 31st March 1998. Against that order passed by the Collector, a petition was preferred before this Court, being Special Civil Application No.2698 of 1998 wherein an order was passed on 15th April 1998 that the Resolution dated 31st March 1998 passed at 9.00 p.m. shall not be disturbed or upset. Subsequently, when the minutes of the meeting which was held at 9.00 p.m. on 31st March 1998 were confirmed in the subsequent meeting, the aforesaid Special Civil Application was withdrawn. However, the petitioners in Special Civil Application No.124 of 1999 and Special Civil Application No.125 of 1999 have been subjected to a notice for their removal under Section 37 of the Municipalities Act on the ground of holding the meeting at 9.00 p.m. on 31st March 1999. While these

proceedings in pursuance of this show cause notice were going on, the petitioners had asked to supply certain documents so as to effectively and adequately reply the notices which had been given to them. Now in this regard, the petitioners' grievance is that the documents asked for by them are not being supplied and the order dated 29th December 1998 had been passed that all the necessary copies of the documents have been given and nothing remains to be given.

4. Learned Counsel for the petitioners has pointed out that the documents asked for by them are specified in the application dated 23rd November 1998 in para 2 of the same at items nos.1 to 8. From the facts of the present case, it clearly transpires that so far as the present petitions are concerned, the limited controversy is as to the documents to be given to the petitioners or not for the purpose of giving them an effective opportunity to file adequate reply to the notices which have been given to the petitioners in both these cases seeking their removal on the ground of holding the meeting at 9.00 p.m. on 31st March 1998. Having gone through the record and the copy of the application dated 23rd November 1998, this Court finds that in order to give an effective opportunity to the petitioners so as to file an adequate reply to the notices given to them, they are entitled to the documents mentioned in the application dated 23rd November 1998. The respondents have not been able to show that the documents have been given to the petitioners or that these documents are not necessary for the purpose of defence against the notices issued to the petitioners.

5. In the facts and circumstances of this case, this Court finds that in the interest of justice, the documents, the details of which have been mentioned in para 2 of the application dated 23rd November 1998 moved by the petitioners at items nos.1 to 8 thereof may be made available to the petitioners before passing any final orders in the proceedings which have been initiated against them by giving the notices and naturally, after the documents are supplied to them, reasonable time has to be given for filing the proper reply. Therefore, the respondents are directed to supply the documents as aforesaid to the petitioners within a period of three weeks from the date the copy of this order is served upon the concerned authorities and thereafter three weeks' time may be further granted to the petitioners to file their reply and only thereafter the respondents may pass appropriate orders in accordance with law after taking into consideration all the objections which may be raised by the petitioners in their reply. The respondents may

also pass a speaking and reasoned order after hearing the petitioners and such order shall also be communicated to the petitioners. Learned Counsel for the petitioners has submitted that an order be passed that even if any order adverse to the petitioners is passed, the same may not be given effect to for certain period. I do not find it necessary to pass such order because it has been brought to the notice of this Court that in Special Civil Application No. 9090 of 1998 and Special Civil Application No.9087 of 1998, an order has already been passed on 3rd November 1998 and the petitioners are already protected by the order dated 3rd November 1998.

6. Both these Special Civil Applications are allowed in terms as aforesaid and the Rule is made absolute accordingly in both the petitions.

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